IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

ITA.No. 47 of 2000

(ORDER IN ITA.795/COCH/1995 of I.T.A.TRIBUNAL,COCHIN BENCH)

APPELLANT/RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX,
TRIVANDRUM.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
ADV. SHRI GEORGE K. GEORGE, SC, INCOMETAX.

RESPONDENT/APPELLANT/ASSESSEE:

B. SHYLAJA,
C/O. M/S. ASWATHY ENTERPRISES,
KOCHUPILAMOODU, KOLLAM - 691 001.

BY ADV. SRI.C.KOCHUNNY NAIR
ADV. SRI.DALE P.KURIEN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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INCOME TAX APPEAL No. 47 OF 2000

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Dated this the 13th August, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Aggrieved by the orders passed by the Income Tax Appellate Tribunal in I.T.A.No. 795/1995 dated 27th October, 1999, the assessee is before us in this Income Tax Appeal.

2. The assessee has framed the following questions of law for our consideration and decision:

> *"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that processing charges collected from others did not partake of the character of sale proceeds to qualify as "turnover" and as such processing charges had to be excluded not only from the total turnover but also from the profits of business while computing deduction under section 80 HHC?*
>
> *2. Whether, on the facts and in the circumstances of the case while computing the relief under section 80HHC of the Incometax Act the processing charges could be excluded from the turnover of the business?*
>
> *3. Whether, on the facts and in the circumstances of the case and in view of Explanation (ba) to section 80HHC and clauses (iiia), (iiib) and (iiic) of section 28 will not turnover take into account all other receipts other than the excluded items of receipts ? "*

3. Learned counsel on both sides inform us that the questions of law framed by the assessee is now covered by the decision of a Division Bench of this court in **Commissioner of Income Tax vs. K. Rajendranathan Nair ([2004] 265 ITR 35).** In the said decision, the court has observed as under:

> *"In the instant case, the assessee admittedly was a registered dealer under the Kerala General Sales Tax Act. The word "turnover " defined in section 2(xxvii) of that Act means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another , on his own account or on account of others, whether for cash or for deferred payment of other valuable consideration. The definition of sale contained in section 2(xxi) of that Act means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration. Processing charges received from third parties do not form part of the "turnover" even under the provisions of the Kerala General Sales Tax Act for that Act is attracted only in a case where there is sales of goods. The assessee had processed raw cashew nuts belonging to third parties in his factory and had only collected the processing charges. The processing charges received by the assessee could not be included in the definition of total turnover in clause (ba) of the Explanation to section 80HHC. The provisions of clauses (iiia), (iiib) and (iiic) of section 28 did not alter the position."*

4. Respectfully following the observations made by this court in the aforesaid decision, the questions of law framed by the assessee is answered in favour of the assessee and against the Revenue.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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I.T.A. No. 47 OF 2000

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Dated this the 13th August,2007

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